

Notice of Allowability

Application No.

09/831,094

Examiner

Darren W. Ark

Applicant(s)

BERNKLAU ET AL.

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Telephonic Interview 6/24/04.
2. ☒ The allowed claim(s) is/are 10-25 and 27-151.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☒ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 1/21/04 & 3/8/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.



Darren W. Ark
Primary Examiner
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EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Dennis Dupray and Joseph Kovarik on Friday, June 25, 2004. Authorization was also given to charge **Deposit Account #19-1970** for any additional fees that are due in connection with this Examiner's Amendment.

The application has been amended as follows:

10. A method to attract termites, comprising:
- providing an enclosure having a plurality of openings for termites to pass therethrough, at least some of said openings defined through a portion of the enclosure;
 - providing an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof including haloalkanes and alkylcarbonates;
 - wherein when said enclosure is in a desired position, at a location having the termites, with said emitting source in said enclosure, a concentration of said at least one gas is emitted from said openings so that when said concentration is encountered by the termites, the termites are attracted to said emitting source;

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wherein said concentration is approximately at least 0.2% by volume of an ambient atmosphere;

wherein said emitted concentration remains in an area about said enclosure for ~~at least two weeks~~ an effective time so that the termites are attracted to said emitting source rather than to a structure sought to be protected from the termites; and wherein said enclosure is, at least prior to being placed in the desired position, separate from the location having the termites.

11. The method of Claim 10, wherein said concentration is in a range extending to approximately 5% by volume ~~no more than about 50%~~, wherein said enclosure includes a sufficient amount of said emitting source for maintaining the emissions of the at least one gas so that the concentration is not lethal to the termites, and is at least about 0.2% by volume of ~~air~~ the ambient atmosphere that is encountered by termites over a period of at least two months in an area large enough to reduce termite attraction to the structure.

12. The method of Claim 10, wherein said concentration is in a range extending to about 5% by volume.

13. The method of Claim 10, wherein said concentration is in a range extending to about 2% by volume.

14. The method of Claim 10, wherein said concentration is in a range from about 0.5% to 1% by volume.

15. The method of Claim 10, wherein said emitting source includes at least one of: a carbonate or bicarbonate formulation.

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16. The method of Claim 10, further including a step of providing soil in said enclosure.
17. The method of Claim 16, further including providing said soil with a moisture content of approximately 20% by weight.
18. The method of Claim 10, further including a step of providing in said enclosure at least one of: an insecticide, insect growth regulator, a feeding stimulant, another termite attractant, or a material that changes termite movement.
19. The method of Claim 18, further including a step of including in said enclosure at least one of: hexaflumuron, or a pheromone.
20. The method of Claim 10, wherein said enclosure includes one of: bacterial, fungal, algal, and other microorganism formulations for generating said concentration.
21. The method of Claim 10, wherein said enclosure is positioned within two meters of a termite colony.
22. The method of Claim 10, wherein said emitting source includes at least one of: spent brewer's grain, or ground germinated corn seeds.
23. The method of Claim 10, wherein said emitting source includes a material that is at least one of: charred or burned.
24. The method of Claim 23, wherein said material includes at least one of: wood, a cellulosic matrix, a polymeric matrix, wood, paper, cardboard, a fabric, a textile, wool, silk, bone, hair, horn, or claws.
25. (Currently Amended) A termite trap, comprising:

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an enclosure for attracting termites, said enclosure including a plurality of openings, at least some of said openings defined through a portion of the enclosure so that the termites can enter the enclosure through said at least some of said openings;

an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof, ~~including haloalkanes and alkyl carbonates;~~

wherein when said enclosure is in a desired position at a location having the termites, and said emitting source is provided in said enclosure, a concentration of said at least one gas is emitted from said openings so that when said concentration is encountered by the termites, the termites are attracted to said emitting source;

wherein said concentration is at least about 0.2% by volume of air encountered by termites;

wherein said concentration remains in an area about said enclosure ~~for at least two weeks~~ so that the termites are attracted to said emitting source rather than to a structure sought to be protected from the termites; and

wherein said enclosure is, at least prior to being placed in the desired position, separate from the location having the termites.

27. The termite trap of Claim 25, wherein said concentration is in a range extending to about 5% by volume.

28. The termite trap of Claim 25, wherein said concentration is in a range extending to about 2% by volume.

29. The termite trap of Claim 25, wherein said concentration is in a range from about 0.5% to 1% by volume.

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30. The termite trap of Claim 25, wherein said emitting source includes one of: carbonate, or bicarbonate formulation.

31. The termite trap of Claim 25, said enclosure includes soil.

32. The termite trap of Claim 31, where said soil has a moisture content of approximately 20% by weight.

33. The termite trap of Claim 25, wherein said enclosure includes at least one of: an insecticide, insect growth regulator, a feeding stimulant, another termite attractant, and a material that changes termite movement.

34. The termite trap of Claim 33, wherein said enclosure includes one of: hexaflumuron and a pheromone.

35. The termite trap of Claim 25, wherein said enclosure includes one of: bacterial, fungal, algal, and other microorganism formulations for generating said concentration.

36. The termite trap of Claim 25, wherein said enclosure is positioned within two meters of a termite colony.

37. The termite trap of Claim 25, wherein said emitting source includes one of: spent brewer's grain, ground germinated corn seeds, and spent grain extract.

38. The termite trap of Claim 25, wherein said emitting source includes a material that is one of: charred and burned.

39. The termite trap of Claim 38, wherein said material includes one of: wood, a cellulosic matrix, a polymeric matrix, wood, paper, cardboard, a fabric, a textile, wool, silk, bone, hair, horn, and claws.

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40. The termite trap of Claim 25, wherein no more than about 10% of the surface area of said enclosure comprises said openings.

41. The termite trap of Claim 25, wherein at least some of said openings are approximately 3 millimeters in diameter.

42. The termite trap of Claim 25, wherein said concentration attracts one of: *Reticulitermes tibialis*, *Reticulitermes flavipes*, and *Reticulitermes virginicus*.

43. The termite trap of Claim 25, wherein the termites are attracted through said openings by said emitting source.

44. The termite trap of Claim 25, wherein said enclosure includes a sufficient amount of said emitting source for maintaining the emissions of the at least one gas so that the concentration of at least about 0.2% by volume of air is encountered by termites over a period of at least two ~~months~~ weeks in an area large enough to attract the termites away from a portion of the structure susceptible to termite damage.

45. (Currently Amended) A termite trap, comprising:

an enclosure for attracting termites thereto, said enclosure including openings;

means for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof ~~including haloalkanes and alkylcarbonates;~~

wherein when said enclosure and said means for emitting are in a desired position at a location having the termites, such that said means for emitting is provided within said enclosure, a concentration of said at least one gas is emitted from said openings so that when said concentration is encountered by the termites, the termites are attracted to said emitting source;

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wherein said concentration is at least about 0.2% by volume of air encountered by termites, and said concentration is less than approximately 5% by volume of the air;

wherein said concentration remains in an area about said enclosure ~~for at least two weeks~~ so that the termites are attracted to said emitting source rather than to a structure sought to be protected from the termites; and

wherein said enclosure is, at least prior to being placed in the desired position, separate from the location having the termites.

46. (Currently Amended) A method for attracting ~~distracting~~ termites, comprising:

providing, in an enclosure having an interior for containing an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof;

providing, in said enclosure, a plurality of openings for said at least one gas to pass therethrough, and for the termites to pass therethrough;

wherein when said enclosure is in a desired position, at a location having the termites, with said emitting source in said enclosure, and at least most of said openings below ground, a concentration of said at least one gas is emitted from said openings below the ground so that when said concentration is encountered by the termites, the termites move toward ~~are distracted by~~ said emitting source ~~from a food source~~;

wherein said concentration is approximately at least four times a concentration of said at least one gas in an ambient atmosphere above the ground substantially at the location, and said concentration is less than approximately twenty-five times the concentration of said at least one gas in an ambient atmosphere above the ground

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substantially at the location, and said concentration remains about said enclosure,
below ground, for at least two weeks; and

wherein said enclosure is, at least prior to being placed in the desired position,
separate from the location having the termites.

47. The method of Claim 10, wherein said concentration is less than an amount to
prevent movement of the termites.

48. The method of Claim 10 further including a step of providing said enclosure
below ground.

49. The method of Claim 10, wherein said concentration is less than a concentration
for inhibiting the termites from entering said enclosure.

50. The method of Claim 10 wherein said concentration is in a range ~~is~~ greater than
0.2% by volume.

51. The method of Claim 10, wherein said enclosure is spaced apart from the
structure approximately at least one meter.

52. The method of Claim 10, wherein said openings have at least one dimension of
approximately three millimeters.

53. The method of Claim 18, wherein the termites enter said enclosure.

54. The method of Claim 18, wherein said enclosure includes an insecticide for killing
at least some termites of a colony near the location.

55. The method of Claim 19, wherein said enclosure includes hexaflumuron.

56. The method of Claim 20, wherein the desired position of said enclosure is
outdoors.

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57. The method of Claim 10, wherein said enclosure is provided substantially below the ground when the at least one gas is emitted by said emitting source.

58. The method of Claim 10, wherein said step of providing said emitting source includes providing one of: sodium bicarbonate, and spent grain extract.

59. The method of Claim 58, wherein said emitting source includes spent grain extract.

60. The method of Claim 10, wherein each of said openings moves correspondingly with a movement of said enclosure.

61. The method of Claim 10, further including a step of transporting said enclosure so that said enclosure is more available for use at the location having the termites.

62. The method of Claim 10, wherein said openings are not generated by termites.

63. The method of Claim 10, wherein said enclosure is constructed of one or more of: plastic, glass, ceramic, and metal.

64. The method of Claim 63, further including a step of providing said openings in said enclosure according to a predetermined design for said openings.

65. The method of Claim 10, wherein at least a majority of said openings are positioned below ground.

66. The method of Claim 10, wherein said emitting source includes a product derived from corn.

67. The method of Claim 10, wherein said emitting source includes corn cob grits.

68. The method of Claim 10, wherein said concentration attracts *Reticulitermes tibialis*.

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69. The method of Claim 10, wherein said concentration attracts *Reticulitermes flavipes*.

70. The method of Claim 10, wherein said concentration attracts *Reticulitermes virginicus*.

71. The termite trap of Claim 25, wherein said emitting source includes sodium bicarbonate.

72. The ~~method~~ termite trap of Claim 25, wherein said emitting source includes a product derived from corn.

73. The ~~method~~ termite trap of Claim 25, wherein said emitting source includes corn cob grits.

74. The termite trap of Claim 25, wherein said enclosure includes a substantially enclosed bottom for supporting the contents therein.

75. The ~~method~~ termite trap of Claim 33, wherein said enclosure includes an insecticide for killing at least some termites of a colony near the location.

76. The ~~method~~ termite trap of Claim 33, wherein said enclosure includes a termite growth regulator for killing at least some termites of a colony near the location.

77. The termite trap of Claim 34, wherein said enclosure includes hexaflumuron.

78. The termite trap of Claim 35, wherein the desired position of said enclosure is outdoors.

79. The termite trap of Claim 25, wherein said openings are sized for termites to pass through.

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80. The ~~method~~ termite trap of Claim 25, wherein said openings are not generated by termites.

81. The ~~method~~ termite trap of Claim 25, wherein said enclosure is constructed of one or more of: plastic, glass, ceramic, and metal.

82. The ~~method~~ termite trap of Claim 25, wherein said openings in said enclosure are manufactured according to a predetermined design for said openings.

83. The ~~method~~ termite trap of Claim 25, wherein at least a majority of said openings are positioned below ground.

84. The ~~method~~ termite trap of Claim 25, wherein said concentration is less than a concentration for inhibiting the termites from entering said enclosure.

85. The termite trap of Claim 42, wherein said concentration attracts *Reticulitermes tibialis*.

86. The termite trap of Claim 42, wherein said concentration attracts *Reticulitermes flavipes*.

87. The termite trap of Claim 42, wherein said concentration attracts *Reticulitermes virginicus*.

88. The termite trap of Claim 44, wherein the area has an extent that is no more than approximately two meters from the structure.

89. The ~~method~~ termite trap of Claim 45, wherein said enclosure includes at least one of: an insecticide, insect growth regulator, a feeding stimulant, or a termite attractant different from said at least one gas.

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90. The ~~method~~ termite trap of Claim 45, wherein said means for emitting includes a product derived from corn.

91. The ~~method~~ termite trap of Claim 45, wherein said means for emitting includes corn cob grits.

92. The method of Claim 46, further including a step of transporting said enclosure so that said enclosure is more available for use at the location having the termites.

93. The method of Claim 46, wherein said concentration is less than a concentration for inhibiting the termites from entering said enclosure.

94. The method of Claim 46, wherein said openings are not generated by termites.

95. The method of Claim 46, wherein said enclosure is constructed of one or more of: plastic, glass, ceramic, and metal.

96. The ~~termite trap~~ method of Claim 46, wherein said enclosure includes at least one of: an insecticide, insect growth regulator, a feeding stimulant, or a termite attractant different from said at least one gas.

97. The method of Claim 46, wherein said emitting source includes a product derived from corn.

98. The method of Claim 46, wherein said emitting source includes corn cob grits.

99. (New) A method to attract termites, comprising:

providing an enclosure having a plurality of openings for termites to pass therethrough, at least some of said openings defined through an exterior of the enclosure;

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providing an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof;

wherein when said enclosure is in a desired position, at a location having the termites, with said emitting source in said enclosure, a concentration of said at least one gas is emitted from said openings so that when said concentration is encountered by the termites, the termites are attracted to said emitting source;

wherein said concentration is approximately at least 0.2% by volume of air, and said concentration is less than an amount that is lethal to the termites;

wherein said emitted concentration remains in an area about said enclosure so that the termites are attracted to said emitting source rather than to a structure sought to be protected from the termites; and

wherein said enclosure is, at least prior to being placed in the desired position, separate from the location having the termites.

100. (New) The method of Claim 99, wherein at least one of the following holds:

- (a) said concentration is encountered by termites over a period of at least two weeks in an area large enough to reduce termite attraction to the structure;
- (b) said concentration is in a range extending to about 5% by volume;
- (c) said enclosure includes at least one of: hexaflumuron, or a pheromone;
- (d) said enclosure is positioned within two meters of a termite colony;
- (e) said enclosure is spaced apart from the structure approximately at least one meter;

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- (f) said openings have at least one dimension of approximately three millimeters; and
 - (g) said openings are not generated by termites.
101. (New) The method of Claim 100, wherein at least some of (a) through (g) hold.
102. (New) The method of Claim 100, wherein a majority of (a) through (g) hold.
103. (New) The method of Claim 100, wherein at least six of (a) through (g) hold.
104. (New) The method of Claim 100, wherein all of (a) through (g) hold.
105. (New) The method of Claim 99, wherein at least one of the following holds:
- (a) said enclosure includes one of: bacterial, fungal, algal, and other microorganism formulations for generating said concentration;
 - (b) said emitting source includes at least one of: a carbonate or bicarbonate formulation;
 - (c) said emitting source includes at least one of: spent grain, or ground germinated corn seeds;
 - (d) said emitting source includes a material that is at least one of: charred or burned;
 - (e) said concentration is less than an amount to prevent movement of the termites; and
 - (f) said concentration is less than a concentration for inhibiting the termites from entering said enclosure.
106. (New) The method of Claim 105, wherein at least some of (a) through (f) hold.
107. (New) The method of Claim 105, wherein a majority of (a) through (f) hold.

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108. (New) The method of Claim 105, wherein at least five of (a) through (f) hold.

109. (New) The method of Claim 105, wherein all of (a) through (f) hold.

110. (New) The method of Claim 99, wherein at least one of the following steps are performed:

- (a) a step of providing soil in said enclosure;
- (b) providing in said enclosure at least one of: an insecticide, insect growth regulator, a feeding stimulant, another termite attractant, or a material that changes termite movement;
- (c) positioning said enclosure within two meters of a termite colony;
- (d) transporting said enclosure so that said enclosure is more available for use at the location having the termites;
- (e) said enclosure is constructed of one or more of: plastic, glass, ceramic, and metal; and
- (f) further including a step of providing said openings in said enclosure according to a predetermined design for said openings.

111. (New) The method of Claim 110, wherein at least some of (a) through (f) hold.

112. (New) The method of Claim 110, wherein a majority of (a) through (f) hold.

113. (New) The method of Claim 110, wherein at least five of (a) through (f) hold.

114. (New) The method of Claim 110, wherein all of (a) through (f) hold.

115. (New) The method of Claim 99, wherein one or more of the following hold:

- (a) at least some of said openings are approximately termite sized;

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(b) about 10% of the surface area of said enclosure comprises said openings; and

(c) the termites are attracted through said openings by said emitting source.

116. (New) The method of Claim 99, wherein said concentration attracts at least one of *Reticulitermes tibialis*, *Reticulitermes flavipes*, and *Reticulitermes virginicus*.

117. (New) A method to attract termites, comprising:

providing an enclosure having a plurality of openings for termites to pass therethrough;

providing an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof;

wherein when said enclosure is in a desired position, at a location having the termites, with said emitting source in said enclosure, a concentration of said at least one gas is emitted from said openings so that when said concentration is encountered by the termites, the termites are attracted to said emitting source;

wherein said concentration is approximately at least 0.2% by volume of air, and said concentration is less than approximately 5% by volume of the air;

wherein said emitted concentration remains in an area about said enclosure so that the termites are attracted to said emitting source rather than to a structure sought to be protected from the termites; and

wherein said enclosure is, at least prior to being placed in the desired position, separate from the location having the termites.

118. (New) The method of Claim 117, wherein at least one of the following holds:

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- (a) said concentration is encountered by termites over a period of at least two weeks in an area large enough to reduce termite attraction to the structure;
 - (b) said concentration is in a range extending to about 5% by volume;
 - (c) said enclosure includes at least one of: hexaflumuron, or a pheromone;
 - (d) said enclosure is positioned within two meters of a termite colony;
 - (e) said enclosure is spaced apart from the structure approximately at least one meter;
 - (f) said openings have at least one dimension of approximately three millimeters; and
 - (g) said openings are not generated by termites.
119. (New) The method of Claim 118, wherein at least some of (a) through (g) hold.
120. (New) The method of Claim 118, wherein a majority of (a) through (g) hold.
121. (New) The method of Claim 118, wherein at least six of (a) through (g) hold.
122. (New) The method of Claim 118, wherein all of (a) through (g) hold.
123. (New) The method of Claim 117, wherein at least one of the following holds:
- (a) said enclosure includes one of: bacterial, fungal, algal, and other microorganism formulations for generating said concentration;
 - (b) said emitting source includes at least one of: a carbonate or bicarbonate formulation;
 - (c) said emitting source includes at least one of: spent grain, or ground germinated corn seeds;

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- (d) said emitting source includes a material that is at least one of: charred or burned;
- (e) said concentration is less than an amount to prevent movement of the termites; and
- (f) said concentration is less than a concentration for inhibiting the termites from entering said enclosure.

124. (New) The method of Claim 123, wherein at least some of (a) through (f) hold.

125. (New) The method of Claim 123, wherein a majority of (a) through (f) hold.

126. (New) The method of Claim 123, wherein at least five of (a) through (f) hold.

127. (New) The method of Claim 123, wherein all of (a) through (f) holds.

128. (New) The method of Claim 117, wherein at least one of the following steps are performed:

- (a) providing soil in said enclosure;
- (b) providing in said enclosure at least one of: an insecticide, insect growth regulator, a feeding stimulant, another termite attractant, or a material that changes termite movement;
- (c) positioning said enclosure within two meters of a termite colony;
- (d) transporting said enclosure so that said enclosure is more available for use at the location having the termites;
- (e) constructing said enclosure from one or more of: plastic, glass, ceramic, and metal; and

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- (f) providing said openings in said enclosure according to a predetermined design for said openings.

129. (New) The method of Claim 128, wherein at least some of (a) through (f) hold.

130. (New) The method of Claim 128, wherein a majority of (a) through (f) hold.

131. (New) The method of Claim 128, wherein at least five of (a) through (f) hold.

132. (New) The method of Claim 128, wherein all of (a) through (f) hold.

133. (New) The method of Claim 117 wherein said concentration attracts at least one of *Reticulitermes tibialis*, *Reticulitermes flavipes*, and *Reticulitermes virginicus*.

134. (New) A termite trap, comprising:

- an enclosure for attracting termites, said enclosure including a plurality of openings, said openings defined through an exterior of the enclosure such that termites are able to enter said enclosure;

- an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof;

- wherein when said enclosure is in a desired position at a location having the termites, and said emitting source is provided in said enclosure, a concentration of said at least one gas is emitted from said openings so that when said concentration is encountered by the termites, the termites are attracted to said emitting source;

- wherein said concentration is at least about 0.2% by volume of air encountered by termites, and said concentration is less than an amount that is physiologically detrimental to the termites;

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wherein said concentration remains in an area about said enclosure so that the termites are attracted to said emitting source rather than to a structure sought to be protected from the termites; and

wherein said enclosure is, at least prior to being placed in the desired position, separate from the location having the termites.

135. (New) The termite trap of Claim 134, wherein at least one of the following holds:

- (a) said concentration is encountered by termites over a period of at least two weeks in an area large enough to reduce termite attraction to the structure;
- (b) said concentration is in a range extending to about 5% by volume;
- (c) said enclosure includes at least one of: hexaflumuron, or a pheromone;
- (d) said enclosure is positioned within two meters of a termite colony;
- (e) said enclosure is spaced apart from the structure approximately at least one meter;
- (f) said openings have at least one dimension of approximately three millimeters; and
- (g) said openings are not generated by termites.

136. (New) The termite trap of Claim 135, wherein at least some of (a) through (g) hold.

137. (New) The termite trap of Claim 135, wherein a majority of (a) through (g) hold.

138. (New) The termite trap of Claim 135, wherein at least six of (a) through (g) hold.

139. (New) The termite trap of Claim 135, wherein all of (a) through (g) hold.

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140. (New) The termite trap of Claim 134, wherein at least one of the following holds:

- (a) said enclosure includes one of: bacterial, fungal, algal, and other microorganism formulations for generating said concentration;
- (b) said emitting source includes at least one of: a carbonate or bicarbonate formulation;
- (c) said emitting source includes at least one of: spent grain, or ground germinated corn seeds;
- (d) said emitting source includes a material that is at least one of: charred or burned;
- (e) said concentration is less than an amount to prevent movement of the termites; and
- (f) said concentration is less than a concentration for inhibiting the termites from entering said enclosure.

141. (New) The termite trap of Claim 140, wherein at least some of (a) through (f) hold.

142. (New) The termite trap of Claim 140, wherein a majority of (a) through (f) hold.

143. (New) The termite trap of Claim 140, wherein at least five of (a) through (f) hold.

144. (New) The termite trap of Claim 140, wherein all of (a) through (f) hold.

145. (New) The termite trap of Claim 134, wherein at least one of:

- (a) said enclosure includes soil;

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- (b) said enclosure includes at least one: an insecticide, insect growth regulator, a feeding stimulant, another termite attractant, or a material that changes termite movement;
- (c) said enclosure is positioned within two meters of a termite colony;
- (d) said enclosure is transported so that said enclosure is more available for use at the location having the termites;
- (e) said enclosure is constructed of one or more of: plastic, glass, ceramic, and metal;
- (f) said openings in said enclosure are provided according to a predetermined design for said openings.

146. (New) The termite trap of Claim 145, wherein at least some of (a) through (f) hold.

147. (New) The termite trap of Claim 145, wherein a majority of (a) through (f) hold.

148. (New) The termite trap of Claim 145, wherein at least five of (a) through (f) hold.

149. (New) The termite trap of Claim 145, wherein all of (a) through (f) hold.

150. (New) The termite trap of Claim 134, wherein said concentration is in a range extending to about 2% by volume.

151. (New) The termite trap of Claim 134, wherein said concentration is in a range from about 0.5% to 1% by volume.

2. The following is an examiner's statement of reasons for allowance:

In regard to claim 10, the prior art of record does not disclose a method to attract termites, comprising providing an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof including haloalkanes and alkylcarbonates; wherein a concentration of said at least one gas is emitted from said openings, wherein said concentration is approximately at least 0.2% by volume of an ambient atmosphere.

In regard to claim 25, the prior art of record does not disclose a termite trap, comprising an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof; wherein said emitting source is provided in said enclosure, a concentration of said at least one gas is emitted from said openings; wherein said concentration is at least about 0.2% by volume of air encountered by termites.

In regard to claim 45, the prior art of record does not disclose a termite trap, comprising means for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof; wherein said means for emitting is provided within said enclosure, a concentration of said at least one gas is emitted from said openings; wherein said concentration is at least about 0.2% by volume of air encountered by termites, and said concentration is less than approximately 5% by volume of the air;

In regard to claim 46, the prior art of record does not disclose a method for attracting termites, comprising providing, in an enclosure having an interior for containing an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof; wherein with said emitting source in said enclosure, and at least

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most of said openings below ground, a concentration of said at least one gas is emitted from said openings below the ground; wherein said concentration is approximately at least four times a concentration of said at least one gas in an ambient atmosphere above the ground substantially at the location, and said concentration is less than approximately twenty-five times the concentration of said at least one gas in an ambient atmosphere above the ground substantially at the location.

In regard to claim 99, the prior art of record does not disclose a method to attract termites, comprising providing an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof; wherein with said emitting source in said enclosure, a concentration of said at least one gas is emitted from said openings; wherein said concentration is approximately at least 0.2% by volume of air, and said concentration is less than an amount that is lethal to the termites.

In regard to claim 117, the prior art of record does not disclose a method to attract termites, comprising providing an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof; wherein with said emitting source in said enclosure; wherein said concentration is approximately at least 0.2% by volume of air, and said concentration is less than approximately 5% by volume of the air.

In regard to claim 134, the prior art of record does not disclose a termite trap, comprising an emitting source for emitting at least one gas of: (i) CO₂, and (ii) one or more mimics thereof; wherein said emitting source is provided in said enclosure, a concentration of said at least one gas is emitted from said openings; wherein said

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concentration is at least about 0.2% by volume of air encountered by termites, and said concentration is less than an amount that is physiologically detrimental to the termites.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA